

## REMARKS

The Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

### 35 U.S.C. §102(e) Rejection – Nicholson

The Examiner has rejected claims 1-33 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2004/0153694 issued to Nicholson et al. (hereinafter "Nicholson"). The Applicants respectfully submit that the present claims are allowable over Nicholson.

Claim 1 recites a method comprising "*requesting an operating system to place a computer system in a hibernation mode; gathering a state of the computer system; storing the system state to a first non-volatile memory of the computer system, and storing the system state to a second non-volatile memory of the computer system*".

Nicholson does not teach or suggest these limitations. In particular, the antecedent basis in claim 1 makes it clear that the same system state is stored to both the first and second non-volatile memories. However, different data is stored in steps 712 and 714 of Nicholson. See e.g., paragraph [0052] of Nicholson. Accordingly, as understood by Applicants, the system state is not stored in both the NVM cache and the remote storage volume in Nicholson.

Furthermore, in Nicholson data is stored on the remote storage volume at step 714. As understood by Applicants, Nicholson pertains primarily to diskless network-bootable computers that lack a hard disk. However, claim 1 makes it clear that the first and second non-volatile memories are both a part of the computer system.

Anticipation under 35 U.S.C. Section 102 requires every element of the claimed invention be identically shown in a single prior art reference. The Federal Circuit has indicated that the standard for measuring lack of novelty by anticipation is strict identity. *"For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, every element of the claimed invention must be identically shown in a single reference."* In *Re Bond*, 910 F.2d 831, 15 USPQ.2d 1566 (Fed. Cir. 1990).

For at least these reasons, claim 1 and its dependent claims are believed to be allowable. Independent claims 8, 12, 20, 26, and 30, and their respective dependent claims, are also each believed to be allowable for one or more reasons similar to those discussed above.

### Conclusion

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance. Applicants respectfully request that the rejections be withdrawn and the claims be allowed at the earliest possible date.

### Request For Telephone Interview

The Examiner is invited to call Brent E. Vecchia at (303) 740-1980 if there remains any issue with allowance of the case.

### Request For An Extension Of Time

The Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

### Charge Our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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